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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,749	04/12/2006	Germano Emiliani	05581-00145-US	3276
23416	7590	09/18/2008	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			AHMED, SHEEBA	
P O BOX 2207				
WILMINGTON, DE 19899			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			09/18/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/575,749	EMILIANI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SHEEBA AHMED	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 July 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 31 and 32 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

***Response to Amendment***

1. Claims 27-30 have been cancelled in the above-identified application.

New claims 31 and 32 have been added.

Newly submitted claims 31 and 32 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Mono or multilayered polypropylene cast film can be used in applications other than labels. Examples of other application include packaging.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 31 and 32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 1-26, 31, and 32 are now pending of which claims 31 and 32 are withdrawn from consideration.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by

Giacobbe et al. (US 5,641,848 A).

Giacobbe et al. disclose a blown film or sheet material comprising a broad molecular weight distribution propylene polymer material having a molecular weight distribution  $M_w/M_n$  of about 4 to about 60, a melt flow rate of about 0.5 to about 50 dg/min, and xylene insolubles at  $25^{\circ}\text{C}$ . of greater than or equal to 94%. A mixture of the broad molecular weight distribution propylene polymer material and a heterophasic olefin polymer composition can also be used (See Abstract). The broad molecular weight distribution propylene polymer material can be, for example, a broad molecular weight propylene homopolymer, or an ethylene/propylene rubber impact-modified broad molecular weight distribution propylene homopolymer. The broad molecular weight distribution propylene homopolymer can also be blended with about 10% to about 90% by weight, based on the total weight of the composition, of a heterophasic olefin polymer composition to give a film with increased impact and tear resistance. The amount of heterophasic olefin polymer composition used depends upon the film properties that are desired. The heterophasic olefin polymer composition is prepared by polymerization in at least two stages and comprises (a) from about 10 to about 50 parts of a propylene homopolymer having an isotactic index greater than 80, or a copolymer selected from the group consisting of (i) propylene and ethylene, (ii) propylene, ethylene and an alpha-olefin, and (iii) propylene and an alpha-olefin as defined in (ii), said copolymer containing over 80% propylene and having an isotactic index greater than 80; (b) from about 5 to about 20 parts of a semi-crystalline, essentially linear copolymer fraction having a crystallinity of about 20% to about 60%,

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wherein the copolymer is selected from the group consisting of (i) ethylene and propylene containing over 55% ethylene, (ii) ethylene, propylene, and an alpha-olefin as defined in (a) (ii) containing from 1 to 10% of the alpha-olefin and over 55% of both ethylene and alpha-olefin, and (iii) ethylene and an alpha-olefin as defined in (a) (ii) containing over 55% of said alpha-olefin, which copolymer is insoluble in xylene at room or ambient temperature; and (c) from about 40 to 80 parts of a copolymer fraction wherein the copolymer is selected from the group consisting of (i) ethylene and propylene containing from 20% to less than 40% ethylene, (ii) ethylene, propylene, and an alpha-olefin as defined in (a) (ii), wherein the alpha-olefin is present in an amount of 1 to 10% and the amount of ethylene and alpha-olefin present is from 20% to less than 40%, and (iii) ethylene and an alpha-olefin as defined in (a) (ii) containing from 20% to less than 40% of said alpha-olefin, and optionally with 0.5 to 10% of a diene, said copolymer fraction being soluble in xylene at ambient temperature, and having an intrinsic viscosity of from 1.5 to 4.0 dl/g; with the total of the (b) and (c) fractions, based on the total olefin polymer composition, being from about 50% to about 90%, and the weight ratio of(b)/(c) being less than 0.4, wherein said composition has a flexural modulus of less than 150 MPa. The film or sheet material can also contain various additives known to those skilled in the art, such as, for example, fillers such as talc and calcium carbonate, pigments, antioxidants, slip agents, and antiblock agents. With regards to the Vicat softening point limitation of the heterophasic polymer, the Examiner takes the position that such a property limitation must be inherent in the heterophasic polymer taught by Giacobbe et al. given that the

chemical composition of the two polymers as taught by Giacobbe et al. and that of the claimed invention are identical. All limitations of claims 1-26 are either inherent or disclosed in the above reference.

***Response to Arguments***

3. Applicant's arguments filed on July 8, 2008 have been fully considered but they are not persuasive. Applicants traverse the rejection of claims 1-26 under 35 U.S.C. 102(b) as being anticipated by Giacobbe et al. (US 5,641,848 A) and submit that their claimed invention is directed to a cast film whereas Giacobbe et al. disclose a blown film and the term "cast" appearing in the preamble should be deemed a limitation of the claim since it gives meaning to the claim and properly defines the invention. Applicants further argue that the Examiner has overlooked the fact that the applicant's claim clearly refers to a film comprising a "high crystallinity" polypropylene which a specific propylene polymer and not the same as the one disclosed by Giacobbe et al.

First, in response the Examiner would like to point out that the preamble has been considered to see how it further defines the structure of the article and has been evaluated for any terminology that limits the structure of the claimed invention. However, it is unclear to the Examiner what structural differences are obtained from making the film by a cast process rather than a blown film process. Furthermore, the patentability of a product does not depend on its method of production. If the product is the same as or obvious from a product of the prior art, the claim is unpatentable.

even though the prior product was made by a different process. The structure implied by the process steps has been considered and it is not clear what distinctive structural characteristics are imparted to the final product by the process. Second, Column 1, lines 39-50 of Giacobbe et al. specifically states that the broad molecular weight distribution propylene polymer material has a melt flow rate of about 0.5 to about 50 dg/min, and xylene insolubles at 25<sup>o</sup>C. of greater than or equal to 94%, and the broad molecular weight distribution propylene polymer material can be, for example, a broad molecular weight distribution propylene homopolymer. Furthermore, the Examiner would like to point out that claim 1 is simply directed to a crystalline propylene polymer but does not recite any specific characteristics of crystallinity.

Hence, the above rejection has been maintained.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEEBA AHMED whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sheeba Ahmed/  
Primary Examiner, Art Unit 1794